



December 21, 1999

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR99-3699

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130536.

The City of Houston (the "city") has received two requests for information regarding a specific 911 call. Both requestors seek a tape recording of the call. In addition, one of the requestors seeks all documents pertaining to the 911 call. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with several confidentiality provisions. We have considered the exception you claim and reviewed the submitted information.

We begin our analysis with the internal affairs report submitted as part of the requested documents. You argue that the report is confidential under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses confidentiality provisions such as section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code sets out rules governing the content and release of two types of personnel files maintained by municipal fire and police departments. The first category is mandatory. "The director or director's designee shall maintain a personnel file on each fire fighter and police officer." Gov't Code § 143.089(a). This

mandatory file must contain “any letter, memorandum, or document *relating to*: . . . (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter.” Gov’t Code § 143.089(a)(2) (emphasis added). Release of information contained in this mandatory file is governed by subsections 143.089(e) and (f) which state:

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person’s personnel file. . . .

(f) The director or the director’s designee may not release any information contained in a fire fighter’s or police officer’s personnel file without first obtaining the person’s written permission, unless release of the information is required by law.

Because information contained in this type of file may be released on the basis of other law or the person’s consent, this information is not confidential and is therefore subject to the Texas Public Information Act (the “Act”), chapter 552 of the Government Code. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

The second type of file described in section 143.089 is discretionary. “A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use” Local Gov’t Code § 143.089(g). The information contained in this type of file is confidential. “[T]he department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. . . .” Local Gov’t Code § 143.089(g); *see also City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

The city has adopted chapter 143 of the Local Government Code, and, therefore, the city fire department is authorized to maintain internal files on its fire fighters. You argue that the submitted report is maintained in the fire department’s “discretionary file” pursuant to section 143.089(g). Therefore, you argue that the report is confidential under section 143.089(g). We agree that information maintained in the department’s internal personnel file is confidential under section 143.089(g). However, the submitted investigative report relates to an allegation of misconduct on the part of a fire dispatcher employed by the City of Houston Fire Department. The report indicates that the allegation was sustained and that disciplinary action was taken. Therefore, the entire report is a document relating to misconduct that resulted in disciplinary action that must be maintained in the “mandatory

file” pursuant to section 143.089(a)(2). Therefore, the report is subject to the Act.¹ Open Records Decision No. 562 at 6 (1990). Because you have not raised any exceptions to required disclosure under the Act, the city must release the report except for the portions that are confidential by law.

For example, the report contains certain personal information about two employees of the Houston Fire Department. Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, if the employees made timely elections under section 552.024, the city must withhold from disclosure their home addresses, home telephone numbers, as well as their social security numbers, and information that reveals whether they have family members.

The report also contains the complainant’s social security number, which may be confidential. Section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security numbers confidential if they are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, if the complainant’s social security number contained in the report meets the criteria of section 405(c)(2)(C)(viii)(I), then it is confidential under this provision as encompassed by section 552.101.

Finally, the report contains the complainant’s Texas driver’s license number. Section 552.130 of the Government Code of the excepts from required public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must redact the complainant’s driver’s license number from the report.

Next, we turn to the tape recording of the 911 call and the submitted transcript of the recording. Section 552.101 of the Government Code encompasses confidentiality provisions such as section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a

¹Because the requestor who seeks the report is the fire fighter who was disciplined, he is entitled to the report upon request under section 143.089(e).

patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). We find that the audiotape and the transcript depict communications between emergency medical services personnel and a patient, via the patient’s spouse, that was made in the course of providing emergency medical services to the patient. Therefore, the audiotape and the corresponding transcript are subject to section 773.091. Accordingly, absent consent by the patient in accordance with section 773.093 to release these pieces of information, they are confidential under section 773.091 as encompassed by section 552.101. However, in regard to the transcript, you must release the information enumerated in section 773.091(g).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

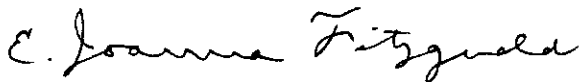
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 130536

Encl: Submitted documents

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